

HOUSE BILL NO. 425

INTRODUCED BY PARKER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAWS, TELEMARKETING LAWS, AND NEW MOTOR VEHICLE WARRANTY LAWS; PROVIDING THAT ALL ADMINISTRATIVE AND ENFORCEMENT FUNCTIONS RELATING TO UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAWS AND TELEMARKETING LAWS BE PLACED UNDER THE DEPARTMENT OF JUSTICE RATHER THAN SPLIT BETWEEN THE DEPARTMENT OF JUSTICE AND THE DEPARTMENT OF ADMINISTRATION; REQUIRING COURTS TO AWARD ATTORNEY FEES TO ~~COUNTY ATTORNEYS OR THE DEPARTMENT OF JUSTICE FOR SUCCESSFULLY~~ BRINGING THE PREVAILING PARTY IN AN ACTION FOR UNFAIR TRADE PRACTICES; TRANSFERRING ALL OF THE DEPARTMENT OF ADMINISTRATION'S ADMINISTRATIVE AND ENFORCEMENT FUNCTIONS, INCLUDING RULEMAKING AUTHORITY, PERTAINING TO NEW MOTOR VEHICLE WARRANTIES TO THE DEPARTMENT OF JUSTICE; AMENDING SECTIONS 30-14-102, 30-14-121, 30-14-131, 30-14-143, 30-14-201, 30-14-202, 30-14-220, 30-14-222, 30-14-226, 30-14-1403, 30-14-1407, 30-14-1412, 30-14-1413, 61-4-507, 61-4-511, 61-4-512, 61-4-515, 61-4-516, 61-4-517, 61-4-518, 61-4-519, 61-4-520, 61-4-525, 61-4-526, AND 61-4-532, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-14-102, MCA, is amended to read:

"30-14-102. Definitions. As used in this part, the following definitions apply:

(1) "Consumer" means a person who purchases or leases goods, services, real property, or information primarily for personal, family, or household purposes.

(2) "Department" means the department of ~~administration~~ justice created in ~~2-15-1991~~ 2-15-2001.

(3) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording.

(4) "Examination" of documentary material includes the inspection, study, or copying of documentary material and the taking of testimony under oath or acknowledgment in respect to any documentary material or

1 copy of documentary material.

2 (5) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated
3 associations, and any other legal entity.

4 (6) "Trade" and "commerce" mean the advertising, offering for sale, sale, or distribution of any services,
5 any property, tangible or intangible, real, personal, or mixed, or any other article, commodity, or thing of value,
6 wherever located, and includes any trade or commerce directly or indirectly affecting the people of this state."

7
8 **Section 2.** Section 30-14-121, MCA, is amended to read:

9 **"30-14-121. Duties of county attorney and attorney general.** It is the duty of the county attorney to
10 lend to the department ~~such the~~ assistance ~~as that~~ the department may request in the commencement and
11 prosecution of actions pursuant to this part. The county attorney ~~or the attorney general~~, on request of the
12 department or ~~a another~~ county attorney, may initiate all procedures and prosecute actions in the same manner
13 as provided for the department. If an action is prosecuted by the county attorney alone ~~or the attorney general~~
14 ~~on request of the county attorney~~, the ~~person prosecuting~~ county attorney shall notify the department as to the
15 nature of the action and the parties to the action within 30 days of the filing of the action. The county attorney
16 ~~or attorney general~~ shall ~~make a report thereon~~ on the action to the department within 30 days of the final
17 disposition of the matter."

18
19 **Section 3.** Section 30-14-131, MCA, is amended to read:

20 **"30-14-131. Restoration -- court orders.** (1) The court may enter orders or judgments necessary to
21 restore to a person any money or property, real or personal, that may have been acquired by means of any
22 practice in this part declared to be unlawful, ~~including~~. The court may order the appointment of a receiver or the
23 revocation of a license or certificate authorizing ~~that a~~ person to engage in business in this state, or both.

24 (2) The court shall award the department or a county attorney reasonable attorney fees TO THE
25 PREVAILING PARTY for bringing a successful action under this part.

26 ~~(2)(3)~~ (3) The court may enter any other order or judgment required by equity to carry out the provisions
27 of this part."

28
29 **Section 4.** Section 30-14-143, MCA, is amended to read:

30 **"30-14-143. Disposition of civil fines, costs, and fees.** (1) All civil fines, costs, and fees received or

recovered by the department pursuant to this part must be deposited into a state special revenue account to the credit of the department and must be used to defray the expenses of the department in discharging its administrative and regulatory powers and duties in relation to this part. Any excess civil fines, costs, or fees must be transferred to the general fund.

~~(2) All civil fines, costs, and fees received or recovered by the attorney general pursuant to this part must be deposited into a state special revenue account to the credit of the attorney general and must be used to defray the expenses of the office of the attorney general in discharging its regulatory powers and duties in relation to this part. Any excess civil fines, costs, or fees must be transferred to the general fund.~~

~~(3)~~(2) All civil fines, costs, and fees received or recovered by a county attorney pursuant to this part must be paid to the general fund of the county ~~where~~ in which the action was commenced."

Section 5. Section 30-14-201, MCA, is amended to read:

"30-14-201. Purpose. The legislature declares that the purpose of this part is to safeguard the public against the creation or perpetuation of monopolies and foster and encourage competition by prohibiting unfair and discriminatory practices by which fair and honest competition is destroyed or prevented. This part ~~shall~~ must be ~~literally~~ liberally construed so that its beneficial purposes may be ~~suberved~~ accomplished."

Section 6. Section 30-14-202, MCA, is amended to read:

"30-14-202. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) (a) "Article of commerce" includes but is not limited to any commodity, product, service or output of a service trade, or any product of the soil.

(b) The term does not include a product or service of a public utility.

(2) "Business" includes any person, domestic or foreign, engaged in the production, manufacture, distribution, purchasing, or sale of any article of commerce within the state of Montana.

(3) (a) "Cost", as applied to production, includes the cost of raw materials, labor, and all overhead expenses of the producer.

(b) Cost, as applied to distribution, means either the invoice price of the article or product sold or the cost to the dealer or vendor for replacing the article or product in the quantity last purchased within 90 days prior to the sale of the article or product, whichever is less, minus all trade discounts except customary cash discounts

1 plus the cost of doing business by the vendor.

2 (4) "Cost of doing business" or "overhead expense" includes all costs of doing business incurred in the
3 conduct of a business and includes but is not limited to the following items of expense:

4 (a) labor (including salaries of executives and officers);

5 (b) rent;

6 (c) interest on borrowed capital;

7 (d) depreciation;

8 (e) selling cost;

9 (f) maintenance of equipment;

10 (g) delivery costs;

11 (h) credit losses;

12 (i) all types of licenses;

13 (j) taxes;

14 (k) insurance and advertising.

15 (5) "Customary cash discount" means any allowance not exceeding 2%, whether a part of a larger
16 discount or not, made to a wholesale or retail vendor when the vendor pays for merchandise within a limited or
17 specified time.

18 (6) "Department" means the department of ~~administration~~ justice provided for in ~~2-15-1994~~ 2-15-2001.

19 (7) "Person" includes any person, partnership, firm, corporation, joint-stock company, or other
20 association engaged in business within this state.

21 (8) "Vendor" includes not only any person acting as one known generally and legally as a vendor but
22 also any person who performs work upon, renovates, alters, or improves any personal property belonging to
23 another person."

24
25 **Section 7.** Section 30-14-220, MCA, is amended to read:

26 **"30-14-220. Enforcement by department.** (1) The department may prevent a person from violating
27 any of the provisions of this part.

28 (2) Upon receiving notice that a person is violating or has violated any of the provisions of this part, the
29 department shall immediately direct the person giving the notice either to appear before the ~~director of the~~
30 department or to make a written reply to show probable cause of a violation. If probable cause is shown, the

1 department may make its own investigation.

2 (3) (a) If the department, after an investigation, has reason to believe that the person has been or is
3 engaging in any course of conduct or doing any act in violation of this part or if it appears to the department that
4 a proceeding by ~~it~~ the department would be in the interest of the public, ~~it~~ the department may issue and serve
5 upon the person a complaint stating the charges and containing a notice of a hearing, the location of the hearing,
6 and the date of the hearing, which may not be less than 5 days after the service of the complaint.

7 (b) A complaint may be amended by the department ~~in its discretion~~ at any time 5 days prior to the
8 issuance of an order based on ~~it~~ the complaint.

9 (c) A person who is the subject of a complaint may appear at the hearing and show cause why an order
10 should not be entered by the department requiring the person to stop the violation of the law charged in the
11 complaint.

12 (d) Any person may apply and upon showing good cause be allowed by the department to intervene
13 and appear in the proceeding by counsel or in person.

14 (e) The testimony in the proceeding must be reduced to writing and filed with the department.

15 (f) If upon the conclusion of the hearing the department determines that the act or conduct in question
16 is prohibited by this part, ~~it~~ the department shall make findings of fact in writing and issue and cause to be served
17 on the person charged an order requiring the person to stop the act or conduct.

18 (g) Until a transcript of the record in the hearing has been filed in a district court, the department may
19 at any time, upon the notice and in the manner ~~it~~ the department considers proper, modify or set aside, in whole
20 or in part, a report or an order made or issued by ~~it~~ the department under this section.

21 (4) A court reviewing an order of the department may issue writs that are ancillary to ~~its~~ the court's
22 jurisdiction or that are necessary ~~in its judgment~~ to prevent injury to the public or to competitors pending the
23 outcome of the suit.

24 (5) To the extent that the order of the department is affirmed, the court shall issue ~~its own~~ an order
25 requiring compliance with the terms of the order of the department.

26 (6) Proceedings under this section must be given precedence over other civil cases pending in the
27 district court and must be in every way expedited.

28 (7) A person who violates an order of the department after it has become final and while the order is
29 in effect shall forfeit and pay to the ~~state~~ department a penalty of not more than \$10,000 for each violation.

30 (8) The remedies and method of enforcement of this part provided for in this section are concurrent and

1 in addition to the other remedies provided in this part."

2
3 **Section 8.** Section 30-14-222, MCA, is amended to read:

4 **"30-14-222. Injunctions -- damages -- production of evidence.** (1) ~~Any~~ A person who is or will be
5 injured; ~~or the department, or the attorney general~~ may ~~maintain~~ bring an action to enjoin an act that is in
6 violation of 30-14-205 through 30-14-214 or 30-14-216 through 30-14-218 and for the recovery of damages. If
7 the court finds that the defendant is violating or has violated any of the provisions of 30-14-205; through
8 30-14-214; or 30-14-216 through 30-14-218, it the court shall enjoin the defendant. It is not necessary to allege
9 or prove actual damages to the plaintiff.

10 (2) (a) In addition to injunctive relief, the plaintiff is entitled to recover from the defendant the greater
11 of three times the amount of actual damages sustained or \$1,000.

12 (b) In addition to any amount recovered pursuant to subsection (2)(a), a plaintiff who proves a violation
13 of 30-14-209 is entitled to \$500 a day for each day that a violation of 30-14-209 occurred.

14 (3) A defendant in an action brought under this section may be required to testify under the Montana
15 Rules of Civil Procedure. In addition, the books and records of the defendant may be brought into court and
16 introduced into evidence by reference. Information obtained pursuant to this subsection may not be used against
17 the defendant as a basis for prosecution under 30-14-205 through 30-14-214, 30-14-216 through 30-14-218,
18 or 30-14-224.

19 (4) In an action brought by a party other than the ~~state~~ department, the prevailing party is entitled to
20 attorney fees and costs."

21
22 **Section 9.** Section 30-14-226, MCA, is amended to read:

23 **"30-14-226. Disposition of civil fines, costs, and fees.** ~~(1)~~ All civil fines, costs, and fees received or
24 recovered by the department pursuant to this part must be deposited into a state special revenue account to the
25 credit of the department and must be used to defray the expenses of the department in discharging its
26 administrative and regulatory powers and duties in relation to this part. Any excess civil fines, costs, or fees must
27 be transferred to the general fund.

28 ~~(2) All civil fines, costs, and fees received or recovered by the attorney general pursuant to this part~~
29 ~~must be deposited into a state special revenue account to the credit of the attorney general and must be used~~
30 ~~to defray the expenses of the office of the attorney general in discharging its regulatory powers and duties in~~

1 ~~relation to this part. Any excess civil fines, costs, or fees must be transferred to the general fund."~~

2
3 **Section 10.** Section 30-14-1403, MCA, is amended to read:

4 **"30-14-1403. Definitions.** As used in this part, the following definitions apply:

5 (1) "Consumer" means a person who is or may be required to pay for goods or services offered by a
6 seller or telemarketer through telemarketing.

7 (2) "Department" means the department of ~~administration~~ justice created in ~~2-15-1991~~ 2-15-2001.

8 (3) "Goods or services" means any real property, any tangible or intangible personal property, or
9 services of any kind provided or offered to a person.

10 (4) "Material aspect" means any factor likely to affect a person's choice of or conduct regarding goods
11 or services. The term includes currency values and comparative expressions of value, including but not limited
12 to percentages or multiples.

13 (5) "Person" means a natural person, corporation, trust, partnership, incorporated or unincorporated
14 association, or other legal entity.

15 (6) "Prize" means anything offered, purportedly offered, given, or purportedly given to a person by
16 chance.

17 (7) "Prize promotion" means a sweepstakes or other game of chance or an oral or written
18 representation, express or implied, that a person has won, has been selected to receive, or is eligible to receive
19 a prize or purported prize.

20 (8) "Seller" means a person who, in connection with a telemarketing transaction, provides, offers to
21 provide, or arranges for others to provide goods or services to the consumer in exchange for consideration.

22 (9) "Solicitation" means a written or oral notification or advertisement that:

23 (a) is transmitted by or on behalf of a seller or telemarketer by any printed, audio, video, cinematic,
24 telephonic, or electronic means to a consumer; and

25 (b) in the case of a notification or advertisement other than by telephone, either of the following
26 conditions is met:

27 (i) the notification or advertisement is followed by a telephone call from a seller or telemarketer; or

28 (ii) the notification or advertisement induces a response by telephone and, through that response, a
29 seller or telemarketer attempts to make a sale of goods or services.

30 (10) "Supervised financial organization" means any bank, trust company, savings and loan association,

1 mutual savings bank, credit union, industrial loan company, consumer finance lender, commercial finance
2 lender, or insurer, provided that the organization is subject to supervision by an agency of this or any other state
3 of the United States or an agency, bureau, or department of government of the United States.

4 (11) "Telemarketer" means a person, located within or outside of this state, who in connection with
5 telemarketing initiates or receives telephone calls to or from a consumer in this state. The term includes a seller
6 directly engaged in telemarketing on the seller's own behalf or a person engaged in telemarketing at the direction
7 of a seller.

8 (12) "Telemarketing" means a plan, program, or campaign that is conducted by telephone to induce the
9 purchase of goods or services and that involves more than one telephone call to a consumer."
10

11 **Section 11.** Section 30-14-1407, MCA, is amended to read:

12 **"30-14-1407. Authority of department, ~~attorney general~~, and county attorney.** (1) The department;
13 ~~the attorney general~~; and a county attorney have the same authority ~~in enforcing~~ to enforce and ~~carrying carry~~
14 out the provisions of this part as they have under Title 30, chapter 14, part 1.

15 (2) All civil fines, costs, and fees received or recovered by the department pursuant to this section must
16 be deposited into ~~the~~ a state special revenue account to the credit of the department and must be used to defray
17 the expenses of the department in discharging its administrative and regulatory powers and duties in relation
18 to this section and to fund the telemarketing fraud consumer awareness program established in ~~30-14-1405~~
19 30-14-1406. Any excess civil fines, costs, or fees must be deposited in the general fund.

20 ~~(3) All civil fines, costs, and fees received or recovered by the attorney general pursuant to this section~~
21 ~~must be deposited into the state special revenue account to the credit of the attorney general and must be used~~
22 ~~to defray the expenses of the office of the attorney general in discharging its duties in relation to this section and~~
23 ~~to establish a telemarketing fraud consumer awareness program similar to the program authorized in~~
24 ~~30-14-1405. Any excess civil fines, costs, or fees must be deposited in the general fund.~~

25 ~~(4)(3)~~ (3) All civil fines, costs, and fees received or recovered by a county attorney must be paid to the
26 general fund of the county ~~where in which~~ where the action was commenced."
27

28 **Section 12.** Section 30-14-1412, MCA, is amended to read:

29 **"30-14-1412. Abusive acts and practices.** (1) It is an abusive telemarketing act or practice and a
30 violation of this part for any seller or telemarketer to engage in the following conduct:

- 1 (a) use threatening, intimidating, or profane or obscene language;
- 2 (b) engage any person repeatedly or continuously with behavior a reasonable person would consider
- 3 annoying, abusive, or harassing;
- 4 (c) initiate a telemarketing call to a person who has stated previously, in compliance with 16 CFR 310
- 5 and 47 CFR 64.1200, that the person does not wish to receive solicitation calls from that seller or telemarketer;
- 6 (d) engage in telemarketing to a person's residence at any time other than between 8 a.m. and 9 p.m.
- 7 local time at the called person's location;
- 8 (e) engage in any other conduct that would be considered abusive to any reasonable consumer; or
- 9 (f) intentionally block a person using caller identification or "*69" from accessing the seller's or
- 10 telemarketer's phone number. It is not a violation of this subsection (1)(f) to provide a reasonable substitute
- 11 name and number that accurately identify the entity causing the call to be made and a working telephone
- 12 number at which the entity's personnel can be contacted.
- 13 (2) The department ~~or the attorney general~~ may seek injunctive or declaratory relief or any other remedy
- 14 provided in Title 30, chapter 14, part 1, for any violations of this section."
- 15

16 **Section 13.** Section 30-14-1413, MCA, is amended to read:

17 **"30-14-1413. Civil remedies -- venue -- burden of proof.** (1) The sale of any goods or services by an

18 unregistered seller or telemarketer that is required to register is void. A person obtaining a judgment for

19 damages, attorney fees, or costs against a seller or telemarketer pursuant to this section has the right to be

20 reimbursed for those damages, attorney fees, or costs from any bond or security posted by the seller or

21 telemarketer pursuant to the provisions of 30-14-1404.

22 (2) A person that suffers a loss or harm as a result of an unfair and deceptive act or practice or a

23 prohibited act or practice is entitled to recover actual damages or \$500, whichever is greater, attorney fees, court

24 costs, and any other remedies provided by law.

25 (3) In addition to the remedies provided in subsection (2), a person that suffers harm as a result of an

26 abusive act or practice is entitled to receive injunctive or declaratory relief.

27 (4) (a) The department, ~~the attorney general~~, or a county attorney, on behalf of state residents who have

28 suffered a loss or harm as a result of a violation of this part, may seek any remedy provided by Title 30, chapter

29 14, part 1.

30 (b) The proper place for trial for an action based on a claim of a violation of this part is the district court

of Lewis and Clark County or the county in which the alleged violation occurred.

(5) In a civil proceeding alleging a violation of this part, the burden of proving an exemption under 30-14-1405 or an exception to a definition contained in 30-14-1403 is on the person claiming the exemption or exception."

Section 14. Section 30-14-1601, MCA, is amended to read:

"30-14-1601. Definitions. As used in this part, the following definitions apply:

(1) "Caller identification service" means a type of telephone service that permits telephone subscribers to see the telephone number of incoming telephone calls.

(2) "Department" means the department of ~~administration~~ justice provided for in ~~2-15-1001~~ 2-15-2001.

(3) "Residential subscriber" means a person who has subscribed to residential telephone service from a local exchange company and the other persons living or residing with the person.

(4) "Telephone solicitation" means any voice communication over a telephone line from a live operator, through the use of an automatic dialing-announcing device, or by other means for the purpose of encouraging the purchase of, rental of, or investment in property, goods, or services. Telephone solicitation does not include communications:

(a) to any residential subscriber with that subscriber's prior express invitation or permission;

(b) by or on behalf of any person or entity with whom a residential subscriber has had a business contact within the past 180 days or has a current business or personal relationship;

(c) by or on behalf of an entity organized pursuant to section 501(c)(1) through 501(c)(6) of the Internal Revenue Code, 26 U.S.C. 501(c)(1) through 501(c)(6), while the entity is engaged in fundraising to support the charitable purpose for which the entity was established and provided that a bona fide member of the exempt organization makes the voice communication;

(d) by or on behalf of any entity over which a federal agency has regulatory authority to the extent that:

(i) subject to that authority, the entity is required to maintain a license, permit, or certificate to sell or provide the merchandise being offered through telemarketing; and

(ii) the entity is required by law or rule to develop and maintain a no-call list;

(e) by a natural person responding to a referral or working from the person's primary residence; or

(f) by a person licensed by the state of Montana to carry out a trade, occupation, or profession who is setting or attempting to set an appointment for actions relating to that licensed trade, occupation, or profession

1 within the state."

2
3 **Section 15.** Section 30-14-1603, MCA, is amended to read:

4 **"30-14-1603. Department to ~~create~~ provide for no-call list database -- rules -- inclusion of national**
5 **database -- database not public record -- no cost to subscribers.** (1) The department shall ~~establish and~~
6 provide for the operation of a database containing a list of names and telephone numbers of residential
7 subscribers who object to receiving telephone solicitations. ~~The department shall have the database in operation~~
8 ~~no later than January 1, 2004.~~ A residential subscriber may be listed in the database without cost to the
9 subscriber.

10 (2) ~~Not later than January 1, 2004, the~~ The department shall promulgate rules and regulations governing
11 the ~~establishment of a~~ state no-call database that are necessary and appropriate to fully implement the
12 provisions of this part. The rules must include but are not limited to rules specifying:

13 (a) the methods by which each residential subscriber may give notice to the department or a contractor
14 designated by the department of the residential subscriber's objection to receiving telephone solicitations or the
15 methods by which the residential subscriber may revoke the notice;

16 (b) the length of time for which a notice of objection is effective and the effect of a change of telephone
17 number on the notice;

18 (c) the methods by which pertinent information may be collected and added to the no-call database;

19 (d) the methods for obtaining access to the no-call database by any person or entity desiring to make
20 telephone solicitations if that person or entity is required to avoid calling the residential subscribers included in
21 the no-call database;

22 (e) the cost to be assessed to a person or entity that is required to obtain access to the no-call database;
23 and

24 (f) other matters relating to the no-call database that the department considers desirable.

25 (3) If the federal communications commission establishes a single national database of telephone
26 numbers of residential subscribers who object to receiving telephone solicitations pursuant to 47 U.S.C.
27 227(c)(3), the department shall include that part of the single national database that relates to Montana in the
28 no-call database established pursuant to this section.

29 (4) Information contained in the no-call database established pursuant to this section may be used only
30 for the purpose of compliance with 30-14-1602 and this section or in a proceeding or action pursuant to

30-14-1605. The information may not be considered a public record pursuant to Title 2, chapter 6.

(5) In April, July, October, and January of each year, the department shall make a reasonable attempt to obtain subscription listings of residential subscribers in this state who have arranged to be included on any national no-call list and add those names to the state no-call list."

Section 16. Section 61-4-507, MCA, is amended to read:

"61-4-507. Exhaustion of remedies under federal law. The provisions of 61-4-503 are not applicable against a manufacturer who has established an informal dispute settlement procedure certified by the department of administration to be in substantial compliance with the provisions of Title 16, Code of Federal Regulations, part 703, ~~as those provisions read on October 1, 1983,~~ unless the consumer has first resorted to that procedure without satisfaction."

Section 17. Section 61-4-511, MCA, is amended to read:

"61-4-511. Manufacturer's dispute settlement procedure -- certification -- prohibited contents.

(1) A manufacturer who has established an informal dispute settlement procedure under the provisions of Title 16, Code of Federal Regulations, part 703 ~~(16 CFR, part 703), as those provisions read on October 1, 1983,~~ shall submit a copy of the procedure to the department of administration. The department of administration shall issue a certificate of approval to a manufacturer whose procedure complies in all respects with the federal regulations and subsection (2). ~~The department of administration shall report to the department of justice all and~~ shall maintain a record of the manufacturer's procedures certified. The department of administration may issue subpoenas requiring the attendance of witnesses and the production of records, documents, or other evidence necessary to ~~it~~ the department in an investigation related to the certification of a manufacturer's informal dispute settlement procedure.

(2) A manufacturer's informal dispute settlement procedure must afford the consumer or the consumer's representative an opportunity to appear and present evidence in Montana at a location reasonably convenient to the consumer and, further, may not include any practices that:

(a) delay a decision in any dispute beyond 60 days after the date on which the consumer initially resorts to the dispute settlement procedure;

(b) delay performance of remedies awarded in a settlement beyond 10 days after a decision, except that a manufacturer may have 30 days following the date of decision to replace a motor vehicle or make refund

1 to the consumer as provided in 61-4-503;

2 (c) require the consumer to make the vehicle available for inspection by a manufacturer's representative
3 more than once;

4 (d) fail to consider in decisions any remedies provided by this part; or

5 (e) require the consumer to take any action or assume any obligation not specifically authorized under
6 the federal regulations referred to in subsection (1)."

7
8 **Section 18.** Section 61-4-512, MCA, is amended to read:

9 **"61-4-512. Annual audit -- revocation or suspension of certification.** (1) A manufacturer establishing
10 an informal dispute resolution procedure shall file with the department of administration a copy of the annual
11 audit required under Title 16, Code of Federal Regulations, part 703 (~~16 CFR, part 703~~), ~~as those provisions~~
12 ~~read on October 1, 1983~~, along with any additional information that the department of administration may
13 require, including the number of refunds and replacements made by the manufacturer during the period audited.

14 (2) The department of administration may, after notice and hearing as provided in Title 2, chapter 4,
15 suspend or revoke the certification of a manufacturer's informal dispute resolution procedure upon a finding that
16 the procedure is being used to create hardship to consumers. ~~The department of administration shall notify the~~
17 ~~department of justice of any revocation or suspension of a certification.~~ The department of administration may
18 consider the revocation or suspension in licensing manufacturers under Title 61, chapter 4, part 2."

19
20 **Section 19.** Section 61-4-515, MCA, is amended to read:

21 **"61-4-515. Arbitration procedure.** (1) The department of administration shall provide an independent
22 forum and arbitration procedure for the settlement of disputes between consumers and manufacturers of motor
23 vehicles that do not conform to all applicable warranties under the provisions of this part. The procedure must
24 conform to Title 27, chapter 5. All arbitration must take place in Montana at a place reasonably convenient to
25 the consumer.

26 (2) Except as provided in 61-4-520, a consumer owning a motor vehicle that fails to conform to all
27 applicable warranties may bring a grievance before an ~~arbitration panel~~ arbitrator only if the manufacturer of the
28 motor vehicle has not established an informal dispute settlement procedure that has been certified by the
29 department of administration under 61-4-511."

1 **Section 20.** Section 61-4-516, MCA, is amended to read:

2 **"61-4-516. Selection of arbitrator.** An arbitrator for a grievance under this part must be chosen by the
3 department of ~~administration~~. The department of ~~administration~~ shall maintain a list of persons willing to serve
4 as an arbitrator."

5
6 **Section 21.** Section 61-4-517, MCA, is amended to read:

7 **"61-4-517. Implementation of arbitration.** (1) A consumer may initiate a request for arbitration by filing
8 a notice with the department of ~~administration~~. The consumer shall file, on a form prescribed by the department
9 of ~~administration~~, any information considered relevant to the resolution of the dispute and shall return the form,
10 along with a \$50 filing fee, within 5 days after receiving it the form. The ~~complaint~~ form must offer the consumer
11 the choice of presenting any subsequent testimony orally or in writing, but not both.

12 (2) The department of ~~administration~~ shall determine whether the complaint alleges the violation of any
13 applicable warranty under this part. If the department of ~~administration~~ determines that a complaint does not
14 allege a warranty violation, it shall refund the filing fee.

15 (3) Upon acceptance of a complaint, the department of ~~administration~~ shall notify the manufacturer of
16 the filing of a request for arbitration and shall obtain from the manufacturer, on a form prescribed by the
17 department of ~~administration~~, any information considered relevant to the resolution of the dispute. The
18 manufacturer shall return the form within 15 days of receipt, with a filing fee of \$250.

19 (4) Fees collected under this section must be deposited in a special revenue fund and account for the use
20 of the department of ~~administration~~ in administering this part.

21 (5) The manufacturer's fee provided in subsection (3) is due only if the ~~department of administration~~
22 department's arbitration procedures are used."

23
24 **Section 22.** Section 61-4-518, MCA, is amended to read:

25 **"61-4-518. Arbitration -- role of department of ~~administration~~ justice -- expert.** (1) The department
26 of ~~administration~~ shall investigate, gather, and organize all information necessary for a fair and timely decision
27 in each dispute. The department of ~~administration~~ may, on behalf of the arbitrator, issue subpoenas to compel
28 the attendance of witnesses and the production of documents, papers, and records relevant to the dispute.

29 (2) If requested by the arbitrator, the department of ~~administration~~ may forward a copy of all written
30 testimony and documentary evidence to an independent technical expert certified by the national institute of

1 automotive excellence. The expert may review the material and be available to advise and consult with the
2 arbitrator. The expert, at the arbitrator's request, may be present whenever oral testimony is presented."

3
4 **Section 23.** Section 61-4-519, MCA, is amended to read:

5 **"61-4-519. Action by arbitrator -- decision.** (1) The arbitrator shall, as expeditiously as possible, but
6 not later than 60 days after the department of administration has accepted a complaint, render a fair decision
7 based on the information gathered and disclose the arbitrator's findings and reasoning to the parties.

8 (2) The decision must provide appropriate remedies, including but not limited to:

9 (a) repair of the vehicle;

10 (b) replacement of the vehicle with an identical vehicle or a comparable vehicle acceptable to the
11 consumer;

12 (c) refund as provided in 61-4-503(2);

13 (d) any other remedies available under the applicable warranties or 15 U.S.C. 2301 through 2312, as
14 in effect on October 1, 1983; or

15 (e) reimbursement of expenses and costs to the prevailing party.

16 (3) The decision must specify a date for performance and completion of all awarded remedies. The
17 department of administration shall contact the prevailing party within 10 working days after the date for
18 performance to determine whether performance has occurred. The parties shall act in good faith in abiding by
19 any decision. In addition, if the decision is not accepted, the parties shall follow the provisions of Title 27, chapter
20 5. If it is determined by the court determines that the appellant has acted without good cause in bringing an
21 appeal of an award, the court, in its discretion, may grant to the respondent costs and reasonable attorney fees."

22
23 **Section 24.** Section 61-4-520, MCA, is amended to read:

24 **"61-4-520. Nonconforming procedure -- arbitration de novo.** A consumer injured by the operation
25 of any procedure that does not conform with procedures established by a manufacturer pursuant to 61-4-511
26 and the provisions of Title 16, Code of Federal Regulations, part 703, ~~as in effect on October 1, 1983,~~ may
27 appeal any decision rendered as the result of the procedure by requesting arbitration de novo of the dispute by
28 a department of administration panel arbitrator. Filing procedures and fees for appeals must be the same as
29 those required in 61-4-515 through 61-4-517. The findings of the manufacturer's informal dispute settlement
30 procedure are admissible in evidence at the ~~department of administration~~ department's arbitration ~~panel~~ hearing

1 and in any civil action arising out of any warranty obligation or matter related to the dispute."

2
3 **Section 25.** Section 61-4-525, MCA, is amended to read:

4 **"61-4-525. Notice on resale of replaced vehicle.** A motor vehicle ~~which~~ that is returned to the
5 manufacturer and ~~which~~ that requires replacement or refund may not be sold in the state without a clear and
6 conspicuous written disclosure of the fact that the vehicle was returned. The department ~~of justice~~ may prescribe
7 by rule the form and content of the disclosure statement and a procedure by which the disclosure may be
8 removed upon a determination that the vehicle is no longer defective."

9
10 **Section 26.** Section 61-4-526, MCA, is amended to read:

11 **"61-4-526. Records of disputes.** The department ~~of administration~~ shall maintain records of each
12 dispute as it determines appropriate, including an index of disputes by brand name and model. The department
13 ~~of administration~~ shall, at intervals of no more than 6 months, compile and maintain statistics indicating the
14 record of compliance with arbitration decisions and the number of refunds or replacements awarded. The
15 statistical summary must be considered by the department ~~of administration~~ in determining the issuance of any
16 manufacturer license required under Title 61, chapter 4, part 2."

17
18 **Section 27.** Section 61-4-532, MCA, is amended to read:

19 **"61-4-532. Rulemaking.** The department ~~of administration~~ may adopt rules to implement the provisions
20 of this part."

21
22 NEW SECTION. **Section 28. Transition.** (1) The provisions of 2-15-131 through 2-15-137 apply to [this
23 act].

24 (2) Agencies involved in the reorganization and transfer of certain governmental functions may:

25 (a) reallocate existing personnel across and within the involved agencies;

26 (b) adjust indirect cost rates commensurate with costs for central management functions; and

27 (c) reallocate and adjust spending authority for indirect charges to the programs of agencies involved
28 in the reorganization.

29
30 NEW SECTION. **Section 29. Notification to tribal governments.** The secretary of state shall send

1 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
2 band of Chippewa.

3
4 **NEW SECTION. Section 30. Code commissioner instruction.** Whenever legislation enacted by the
5 59th legislature refers to the "department of administration" that under [this act] would refer to the department
6 of justice, the code commissioner shall change the reference in the enacted legislation to conform to [this act].

7
8 **NEW SECTION. Section 31. Effective date.** [This act] is effective July 1, 2005.

9 - END -